EXHIBIT Y

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADVANCEME, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	6:05-cv-424-LED-JDL
RAPIDPAY LLC, BUSINESS CAPITAL	)	PATENT CASE
CORPORATION, FIRST FUNDS LLC,	)	
MERCHANT MONEY TREE, INC.,	)	
REACH FINANCIAL, LLC, and FAST	)	
TRANSACT, INC. d/b/a SIMPLE CASH	)	
	)	
Defendants.	)	

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADVANCEME, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	6:06-cv-82-LED-JDL
AMERIMERCHANT, LLC,	)	PATENT CASE
	)	
Defendant.	)	

VIDEOTAPE DEPOSITION OF: TOM McBREARTY
February 13, 2007

PURSUANT TO NOTICE, the videotape deposition of TOM McBREARTY was taken on behalf of the Defendants First Funds, Merchant Money Tree, Reach Financial, and AmeriMerchant at 7800 East Tufts Avenue, Hyatt Regency, Thunder Pass Room, Denver, Colorado 80237, on February 13, 2007, at 9:32 a.m., before Susan G. Schneider, Shorthand Reporter and Notary Public within Colorado.

and credits to us, and we could put those right on our system.

And then the next step in the evolution was that we did all of the -- which is a fairly substantial IT project, to automate all of this on our mainframe system, which says that we could take in the transactions directly, make the calculations, and they wouldn't have to pass through, I mean, an intermediary, which in this case would be -- in the original case was LeCARD, because we didn't want to -- we didn't want to fool with the paper.

Q. So once you'd automated the processing on your mainframe system, that means Diners Club's mainframe system, right?

A. Yes. It's a Citibank system that Diners Club operates on, uh-huh.

Q. So once that had occurred, then LeCARD was no longer involved in processing Diners Club/LeCARD electronic transactions; is that correct?

A. Yes. That's true.

Q. And do you recall when that switch occurred, and does that document DC Exhibit 3 help you at all?

A. It certainly -- this is describing -- this document is describing that situation. So you know, when was the work done? Well, I would suggest to you

A. Yes.

Q. So that was the processing fee that Diners Club charged to the restaurant for processing this transaction; is that correct?

A. That's correct.

Q. Okay. And then going on to the next page?

A. This is what was referred to in the letter -- in the letter to the restaurants as a letter of change.

Q. Okay.

A. And letter of change is a -- was a Diners Club terminology for a letter that was, again, generated by the mainframe to describe something that -- where the payment to the restaurant had a difference than what was submitted to Diners Club; some difference. It could be a chargeback. It could be something, but it explains what the change is --

Q. Okay.

A. -- between what they sent us and what we were paying them.

Q. Okay. And what is this one? Explain what this is.

A. Well, and this one would be pulling out -- in the total, it was described -- in the total of $600 that they submitted, $100 was a LeCARD charge. So that was going to be put over here, and it refers back to the

statement here that says, there's the other $500.
So the $500 constitutes the -- which would be the regular Diners Club charges and the Carte Blanche charges. This is the $100. This is the LeCARD charge. This is telling the restaurant, why is this only 500? We sent -- the restaurant sent us 600. Here's 500. Here's the other 100 that goes, you know, to LeCARD.
Q. Okay. And then that's the page that has LC 0004 at the bottom right, right?
A. Correct.
Q. And then if we turn to the next page, that page deals with the hundred dollars that is reflected on the previous page; is that correct?
A. That's correct.
Q. Okay. And what does that page convey to the restaurant?
A. I'm sorry. What does this --
Q. What is this page that's got LC 0005?
A. LC 00005.
Q. Okay. Can you explain that to me, please?
A. Yes. This -- this is a statement that LeCARD sent to the restaurant to describe what happens with the transaction that was referred to on LC 00004. And that is -- now, this is the reconciliation of that, since the hundred dollars is the gross transaction, that, you

A. Portion.

Q. -- is applied to reduce the obligation; is that correct?

MS. WILLIAMS: Objection.

Q. (BY MR. SCHUURMAN) So am I --

A. Oh, I'm sorry.

MS. WALLACE: I think there's an outstanding question.

A. I'm sorry. I was --

Q. (BY MR. SCHUURMAN) Does that -- that part that you've just referred to, does that mean that the food and beverage portion of a transaction is applied to reduce the obligation, but not the tax and tip amount?

A. Yes.

MS. WILLIAMS: Objection.

Q. (BY MR. SCHUURMAN) Okay. And then could you turn to the next page, which is LC 00008. And that is the -- these two pages go together, I understand; that the one appears on the back of the other, the two pages that we've just looked at, the 7 and 8. If you look at LC 00007, it says, "The terms and conditions printed on the reverse of this agreement" -- do you see that in --

A. Oh, yeah, yeah. Yes, I --

Q. -- "are an integral part of this agreement and CLI and restaurant agree to be bound thereby." So page

LC 00008 is the reverse of the previous page?

MS. WILLIAMS: Objection.

A. Okay.

Q. (BY MR. SCHUURMAN) Had you ever seen terms and conditions of that type?

A. Yes. I don't know that I've seen this exact one, but certainly I've seen these, and I would -- so yes.

Q. And then if you look at paragraph 5 -- paragraph 6, rather, "Restaurant shall maintain its status as a Diners Club member establishment and shall agree to process directly to Diners Club and be paid by Diners Club." Do you see that?

A. Yeah.

Q. And that's what you discussed earlier, that they had to process directly to Diners Club; is that correct?

A. Yes.

Q. And then what I'd like you to do is to turn to the page that -- the second-last page?

A. 11?

Q. That's 11, yes, LC 11, and that is -- again, it's a document from LeCARD to Club Lucky?

A. Uh-huh.

Q. And have you ever seen -- did you ever see a

-- but we always had the responsibility of delivering the credits to the card member.

Q. And how would the card member receive that credit? Would it just be an actual credit reflected on their statement, or would they actually receive moneys from Diners Club?

A. It was on the statement, and we caused it to be -- the statement rendition system, which is part of the card member system, recognized it as -- and we mapped the -- I forget exactly how this worked. We mapped the transaction so that it would -- the charge and the credit would appear together on the statement. So you'd see ABC Restaurant, $100; LeCARD credit, $20. And they would always show up together on the statement, so it was netted out in what was the amount. We didn't send money. We netted it in the statement.

Q. Okay. And previous to LeCARD's automated system, what would happen to the remaining balance after Diners Club would credit the card member account? Where -- what would happen to that remaining balance?

A. Well, we'd take our fee and we'd pay LeCARD.

Q. And at that time, were the payments to LeCARD by ACH as well?

A. I'm not sure. It -- I don't think there would have been a good reason for us to pay by check, and if correctly and be able to reconcile, that's all they care about.

Q. Right. Mr. McBrearty, I'd like you to look at the document that was marked as Exhibit 3.

A. Uh-huh.

Q. And if you could turn to the page that's LC underscore 00004 in the right-hand corner.

A. Uh-huh.

Q. You explained that the -- that LC 00004 is a letter of change; is that correct?

A. Yes.

Q. And that this document would be generated by Clever Ideas --

A. No.

Q. -- or LeCARD, by LeCARD?

A. No.

Q. This document is generated by Diners Club?

A. Yes.

Q. Okay. And is it correct that this letter of change was necessary because the -- these transactions that are reflected here included a hundred-dollar LeCARD transaction?

A. Yes.

Q. Okay. And when -- at the time that this statement was generated, if Diners club received a

LeCARD transaction, they would send the entire transaction to LeCARD; is that correct?

A. I don't think so. Let me -- no. That wouldn't -- that's not a correct statement. So it's --

Q. How do you explain what would happen?

A. So I would say this: You have to go back and you have to look at these -- these two pieces in its -- so Nos. 3 and No. 4 go together. And this, a restaurant was sending in charges directly to Diners Club, and those charges were regular Diners Club charges, Carte Blanche charges, and LeCARD charges, the three types. And that combination was $600. That's indicated, because it says here in one of these statements that that's what this example is, but -- without finding them, that this is -- they sent in $600 worth of charges.

And what our system did was take that in and say, here's $600. We owe the restaurant 500. That would be for the Diners Club and Carte Blanche charges. So we're going to pay them $500, and the system would pay them and generate this statement. But, of course, it doesn't balance with what they sent us, which was $600, so it -- there's a letter of change comes out that goes with the statement.

And the letter of change is what's just -- the reason it's called "change" is, what's changed from what you sent us to what we paid you. And there can be a lot of reasons that that might be the case, refunds and chargebacks and all. There's a long list of things.

And one of those things is that there was a LeCARD transaction, which is what this is, the hundred-dollar one. And this is telling the merchant, You sent us -- they know they sent us 600. Here's your 500. You got paid. And here's the reason that we paid this, because you had a LeCARD transaction, and that's -- we sent the money to LeCARD. And it says in there the reason, LeCARD will settle directly with you.

And that's that other math, which is the next page, which is, we tell them that LeCARD is going to settle with them. Then LeCARD actually does, and they send them this document. So that's the continuum.

Q. Okay. So I think you answered my question. Maybe I just didn't word it right, but --

A. No, I know it's complicated. It's hard not to go through all the steps and pick -- it's hard to pick out one little piece of it, you know.

Q. Okay. So let me make sure I understand, then, what you just testified to. So in this context, in this transaction, there was a total amount of $600?

A. Right.

Q. 100 of that included a LeCARD transaction?

A. Right.

Q. Diners Club received the transactions from the restaurant --

A. Uh-huh.

Q. -- correct? And upon recognizing that a hundred dollars of the 600 was a LeCARD transaction, Diners Club forwarded that information to LeCARD? Is that -- is that how that worked?

A. Yes. Let me give you -- well, we got the hundred-dollar transaction in, and we did several things with it.

Q. Okay.

A. We took our fee. We calculated the 20 percent credit and sent that over to the merchant -- I mean, to the card member system, along with the original transaction.

Q. Okay.

A. So two transactions went to the card member system for billing to the card member, and then we would send the net amount to LeCARD. So we weren't sending LeCARD the hundred dollars. We were sending them the net.

Q. Okay. And that's the net minus Diners Club's processing fees, and anything else?

A. And the credit to the card member.

Q. The credit to the card member. Did Diners Club forward the amount of tax and tip from transactions to restaurants, or was that LeCARD?

A. LeCARD.

Q. Mr. McBrearty, were you asked to provide any documents to defendants' counsel in this case?

A. No.

Q. Were you asked to search for any documents in connection with this litigation?

A. No.

Q. Have you had any communications regarding this litigation other than at the deposition today?

A. No.

Q. Is your employer aware that you're attending the deposition today --

A. My --

Q. -- your former employer?

A. My former employer is fully aware, yes. I wanted to make sure that that was the case, you know.

Q. Okay. So you at least communicated with Diners Club concerning the deposition today; is that correct?

A. Yeah.

MS. WALLACE: And, also, I just want to

Q. Okay. And then I wanted to refer you to the same Exhibit 3, to pages LC four zeros followed by a 4 and four zeros followed by a 5. And I think you explained that pretty clearly, but I just wanted to be sure that there's no misunderstanding.

For a transaction as reflected in LC 00004, for that transaction, that LeCARD transaction where it says, "LeCARD will settle directly with you" -- do you see that?

A. Yes.

Q. Diners Club, so for that transaction, did all the processing aspects of it, didn't it?

MS. WILLIAMS: Objection.

MR. SCHUURMAN: What is the objection?

MS. WILLIAMS: It's vague.

Q. (BY MR. SCHUURMAN) Do you understand my question?

A. Ask me again.

Q. Okay. Let me -- for that particular transaction that's reflected on this page, this hundred dollars --

A. Uh-huh.

Q. -- for that transaction, Diners Club handled that transaction by receiving the transaction information from the merchant electronically and authorizing that transaction; is that correct?

A. Yes.

Q. In addition, Diners Club would handle that transaction on its mainframe, as you previously testified; is that correct?

A. Yes.

Q. And the only thing -- and Diners Club would then send the information about the transaction to Clever Ideas and would send the transaction amount to Clever Ideas; is that correct?

A. Yes. I'm --

Q. Please explain.

A. The transaction amount is the troubling term there.

Q. Okay.

A. So I -- but let me just -- the answer is yes, that this letter says that the transaction amount, which was a hundred dollars, was not paid to the restaurant. And this is telling them why.

Q. Right.

A. And then that hundred dollars, the transaction amount, if you will, then gets manipulated. So the hundred dollars -- we take our fee and put 20 percent over here to the card member, so Clever Ideas is sent the net of those things. Then Clever Ideas subsequently takes that net and takes the tax and tip, which is another amount.

Q. And Clever Ideas then takes and tax and tip out and sends that to the merchant?

A. That's correct.

Q. And the balance, Clever Ideas applies to reduce the obligation owed to it by the merchant?

A. That's correct.

Q. And it doesn't do -- in other words, it doesn't somehow become part of the processing environment?

A. No. The processing ends at Diners. Diners Club has done the processing, and we make a payment -- we made a payment to LeCARD, and then they further split up that payment.

Q. Okay.

A. It's not -- that's -- there's some processing, but it's not credit card processing.

Q. Thank you.

And then you were asked a question about what type of information was given to restaurants about how Diners Club and LeCARD operated -- and, again, I'd like you to refer to Diners Club Exhibit 3 -- that certainly the restaurants were told by Clever Ideas-LeCARD that LeCARD transactions were captured electronically and

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I, Susan G. Schneider, a Certified Shorthand Reporter in and for the State of Colorado hereby certify to the following:

That the witness, Tom McBrearty, was duly sworn by me and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on ______________ to the witness or to the attorney for the witness for examination, signature and return to me by

March 27, 2007.

That the amount and time used by each party at the deposition is as follows:

Mr. Schuurman: 2 hrs. 29 min.

Ms. Williams: 50 min.

That pursuant to information given to the deposition officer at the time said testimony was taken, the following include all parties of record:

Sarah Block Wallace, Esq., for the Deponent

William G. Schuurman, Esq., for First Funds, Merchant Money Tree, Reach Financial, and AmeriMerchant

Shanee Y. Williams, Esq., for Advanceme, Inc.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken and further, that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of the TRCP will be certified to after they have occurred.

Certified to by me this 19th day of February, 2007.

NOTARY PUBLIC
Susan G. Schneider
STATE OF COLORADO

Susan G. Schneider
Shorthand Reporter